IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11980 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

RANCHHODBHAI GOMANBHAI PARMAR - Respondent(s)

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Appearance :
MS ROOPAL R PATEL for Petitioner(s) : 1,
MR BHARAT JANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/11/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 16.5.2001 passed by the Labour Court, Surat, in Reference (LCA) No.232 of 1997 whereby the Labour Court partly allowed the said reference and directed the petitioner to reinstate the respondent in service with continuity of service without any back wages. The Labour Court has also imposed a penalty of stoppage of three increments with permanent effect.

2. The short facts of the case are that the respondent was working as a

conductor with the petitioner Corporation. On a surprising checking it was found that the respondent was involved in certain irregularities and therefore a charge sheet was issued to him and a departmental inquiry was initiated against him. After following the procedure the services of the respondent were terminated. The appeal preferred by the respondent also came to be dismissed. Thereafter the respondent raised a dispute which was referred to the Labour Court and registered as Reference (LCA) no.232 of 1997. The Labour Court, after hearing the parties, passed the aforesaid award.

3. Learned counsel for the petitioner submitted that looking to the irregularities committed by the respondent, the Labour Court ought not to have set aside the order of dismissal. He further submitted that the punishment imposed by the Labour Court is not in consonance with the gravity of the misconduct committed by the respondent.

4. Learned counsel for the respondent submitted that the Labour Court has not granted any back wages and imposed punishment upon the respondent and therefore there is no case for interference by this Court in the present petition.

5. As a result of the hearing and perusal of the record it is found that the Labour Court has given cogent and convincing reasons for granting

reinstatement with continuity of service. However, looking to the misconduct of the respondent and in view of the 37 defaults committed by the respondent, I am of the view that the penalty imposed upon the respondent is not adequate. On the overall facts and circumstances of the case, I am of the opinion that interest of justice would be met by imposing a penalty of stoppage of four increments with future effect instead of three increments with future effect.

6. I am further of the opinion that while exercising powers under section 11A of the Act, the Labour Court has committed an error in awarding back wages. No reasons are assigned for grant of back wages and the Labour Court was not justified in awarding back wages. In any case the law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

7. Accordingly the award qua back wages is quashed and set aside. A penalty of stoppage of four increments with future effect instead of three increments with future effect shall be imposed upon the respondent. The award of the Labour Court is modified only to the aforesaid extent. It is clarified that the rest of the award is not disturbed. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]